

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JODY D. PATTERSON,)	No. C 07-5579 RMW (PR)
)	
Petitioner,)	ORDER GRANTING
)	PETITIONER'S MOTION TO
vs.)	PROCEED IN FORMA
)	PAUPERIS; ORDER TO SHOW
)	CAUSE
BEN CURRY, Warden,)	
)	
Respondent.)	
_____)	(Docket No. 2)

Petitioner, a state prisoner proceeding pro se, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 and a motion to proceed in forma pauperis. Petitioner challenges the Board of Prison Terms' ("Board") decision denying him parole at his August 2, 2006 parole suitability hearing. The court will GRANT petitioner's motion to proceed in forma pauperis (docket no. 2) and order respondent to show cause as to why the petition should not be granted.

STATEMENT

In 1991, petitioner was sentenced to seven years-to-life in prison after his conviction in Orange County Superior Court for attempted murder (Cal. Penal Code §§ 664(a), 187). Petitioner challenges the Board of Prison Terms' denial of parole after his August 2006 parole suitability hearing. Petitioner filed a state habeas petition with the superior court, which was denied on March 22, 2007. See Petition, Exhibit I. Petitioner filed a state habeas petition with

1 the state appellate court, which was denied on June 7, 2007. Petitioner then filed a state habeas
 2 petition with the state supreme court, which was summarily denied on August 8, 2007.
 3 Petitioner filed the instant federal habeas petition on November 1, 2007.

4 DISCUSSION

5 A. Standard of Review

6 This court may entertain a petition for writ of habeas corpus “in behalf of a person in
 7 custody pursuant to the judgment of a state court only on the ground that he is in custody in
 8 violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a); Rose
 9 v. Hodges, 423 U.S. 19, 21 (1975).

10 A district court shall “award the writ or issue an order directing the respondent to show
 11 cause why the writ should not be granted, unless it appears from the application that the
 12 applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243.

13 B. Petitioner’s Claims

14 As grounds for federal habeas relief, petitioner alleges five claims relating to the Board’s
 15 decision denying parole in violation of petitioner’s federally protected right to due process
 16 guaranteed by the Fifth and Fourteenth Amendments. Liberally construed, petitioner’s
 17 allegations are sufficient to require a response.

18 CONCLUSION

19 1. Petitioner’s motion to proceed in forma pauperis (docket no. 2) is
 20 GRANTED.

21 2. The clerk shall serve by mail a copy of this order and the petition
 22 and all attachments thereto upon the respondent and the respondent’s attorney, the Attorney
 23 General of the State of California. The clerk shall also serve a copy of this order on the
 24 petitioner.

25 3. Respondent shall file with the court and serve on petitioner, within **sixty days** of
 26 the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules Governing
 27 Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted.
 28 Respondent shall file with the answer and serve on petitioner a copy of all portions of the state

1 parole record that have been transcribed previously and that are relevant to a determination of
2 the issues presented by the petition.

3 If petitioner wishes to respond to the answer, he shall do so by filing a traverse with the
4 court and serving it on respondent within **thirty days** of his receipt of the answer.

5 4. Respondent may file a motion to dismiss on procedural grounds in lieu of an
6 answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section
7 2254 Cases. If respondent files such a motion, petitioner shall file with the court and serve on
8 respondent an opposition or statement of non-opposition within **thirty days** of receipt of the
9 motion, and respondent shall file with the court and serve on petitioner a reply within **fifteen**
10 **days** of receipt of any opposition.

11 5. It is petitioner's responsibility to prosecute this case. Petitioner is reminded that
12 all communications with the court must be served on respondent by mailing a true copy of the
13 document to respondent's counsel. Petitioner must keep the court and all parties informed of any
14 change of address by filing a separate paper captioned "Notice of Change of Address." He must
15 comply with the court's orders in a timely fashion. Failure to do so may result in the dismissal
16 of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

17 IT IS SO ORDERED.

18 DATED: 2/11/08



RONALD M. WHYTE
United States District Judge

1 This is to certify that on 2/12/08, a copy of this ruling was
2 mailed to the following:

3 Jody D. Patterson
4 E-88649/ GW-252-L
5 CTF
6 P.O. Box 689
7 Soledad, CA 93960-0689
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